UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
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CAROLYN DELOISE READY,	*	
	*	**CASE NUMBER 03-45308**
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Debtor.	*	
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CAROLYN DELOISE READY,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	**ADVERSARY NUMBER 03-4451**
	*	
SALLIE MAE SERVICING CORP., *et al.*,	*	*
	*	
Defendants.	*	
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M E M O R A N D U M O P I N I O N
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On October 16, 2003, Debtor/Plaintiff Carolyn Deloise Ready ("Plaintiff") filed a petition for relief under Chapter 13 of Title 11, United States Code. On November 14, 2003, less than one month after filing her bankruptcy petition, Plaintiff filed this adversary proceeding (the "Complaint") to determine the discharge-ability of her student loan debt under 11 U.S.C. § 523(a)(8). Defendant Educational Credit Management Corporation ("Defendant") filed a motion to dismiss the Complaint without prejudice (the "Motion") on the grounds that any determination of

undue hardship under 11 U.S.C. § 523(a)(8) is not ripe for adjudication at this time. Plaintiff filed a response to the Motion. Defendant filed a reply brief in support of the Motion and Plaintiff filed a response to Defendant's reply brief. Lastly, Defendant filed a notice of additional authority in support of its Motion. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

D I S C U S S I O N

Plaintiff filed a Complaint to determine the discharge-ability of her student loan debt on November 14, 2003, less than one month after Plaintiff filed her bankruptcy petition. Plaintiff's Chapter 13 Plan (the "Plan") was confirmed on March 5, 2004. The terms of the Plan, as confirmed, require Plaintiff to pay Three Hundred Seventy-Five Dollars ($375.00) per month for a term of 60 months. Thus, under the terms of the confirmed Plan, Plaintiff will not complete Plan payments for almost four more years.

Defendant argues that an adversary proceeding seeking to discharge a student loan debt is not ripe for decision until a Chapter 13 plan is near completion because a determination of dis-chargeability is only relevant if discharge is actually

granted. Defendant asserts that if Plaintiff fails to complete her Plan, then her Chapter 13 bankruptcy case will be dismissed and any determina-tion under § 523(a)(8) will become moot. Defendant concludes that because Plaintiff's successful completion of the Plan is only speculative at this time, an adversary proceeding seeking to deter-mine the dischargeability of her student loan debt is not yet ripe.

Plaintiff asserts that a determination of the discharge-ability of a student loan debt is ripe prior to the completion of a Chapter 13 plan. Federal Rule of Bankruptcy Procedure 4007(b) specifically provides that, a complaint to obtain a determination of the dischargeability of any debt, other than a complaint under § 523(c), "may be filed at any time." FED. R. BANKR. P. 4007(b). Therefore, Plaintiff asserts, Defendant's rationale contradicts the explicit language set forth in Bankruptcy Rule 4007(b). In addition, Plaintiff points out that Bankruptcy Rule 4007 does not distinguish its application in Chapter 7 bankruptcy cases from that of Chapter 13 bankruptcy cases. Plaintiff concludes the Complaint is ripe.

I S S U E

The issue before the Court is whether, within the context of a Chapter 13 bankruptcy, the Complaint seeking to discharge the student loan debt is ripe for decision although it is brought years before the completion of the Plan.

L E G A L A N A L Y S I S

Generally, a Chapter 13 debtor is not entitled to a discharge of debts until after completion of all payments under the plan. 11 U.S.C. § 1328(a). Section 1328(a) of the Bankruptcy Code provides in pertinent part, "[a]s soon as practicable after completion by the debtor of all payments under the plan, . . . the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title[.]" 11 U.S.C. § 1328(a). Although most debts are discharged upon debtor's completion of plan payments, the Bankruptcy Code enumerates several debts excepted from discharge. In pertinent part, the Bankruptcy Code provides that debts of the type specified in § 523(a)(8), student loan debts, will not be discharged upon completion of Chapter 13 plan payments. 11 U.S.C. § 1328(a)(2).

Although typically excepted from discharge, student loan debts can be discharged if the debtor proves that excepting such a discharge "will impose an undue hardship on the debtor and the debtor's dependants." 11 U.S.C. § 523(a)(8). A debtor must file an adversary proceeding and prove undue hardship exists to have his or her student loans discharged. FED. R. BANKR. P. 7001(6). The United States Court of Appeals for the Eighth Circuit explains:

> We find it significant that the general rule of nondischargeability of student loans is

> phrased as an exception to the Chapter 13 discharge, and a showing of "undue hardship" simply eliminates the exception. Accordingly, when student loans are discharged it is as part of the regular Chapter 13 discharge, rather than as a separate event.

Bender v. Educ. Credit Mgmt. Corp. (In re Bender), No. 03-2507, 2004 U.S. App. LEXIS 9287, at *2 (8th Cir. May 12, 2004). A determina-tion of student loan debt dischargeability is based on whether undue hardship exists at the time of discharge, not whether undue hardship exists at the time that a § 523(a)(8) proceeding is commenced. *Id.* at *4; *Soler v. United States of Am. (In re Soler)*, 250 B.R. 694, 697 (Bankr. D. Minn. 2000). In the case at bar, Plaintiff filed the Complaint less than one month after filing a Chapter 13 bankruptcy petition, four months before Plaintiff's Plan was confirmed and more than four years before Plaintiff would be eligible for a discharge. Thus, the Court is not in a position to evaluate Plaintiff's financial circumstances at the time of discharge. Therefore, the matter before the Court is premature.

To establish undue hardship, the United States Court of Appeals for the Sixth Circuit has adopted a multi-factor approach, beginning with the three-prong analysis announced by the Second Circuit in its *Brunner* case:

> One test requires the debtor to demonstrate "(1) that the debtor cannot maintain, based on current income and expenses, a 'minimal' standard of living for herself and her depen-

> ents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period . . .; and (3) that the debtor has made good faith efforts to repay the loans."

Cheesman v. Tenn. Student Assistance Corp. (In re Cheesman), 25 F.3d 356, 359 (quoting *Brunner v. N.Y. State Higher Educ. Servs. Corp.*, 831 F.2d 395, 396 (2nd Cir. 1987)). Additional considerations include "the amount of the debt . . . as well as the rate at which the interest is accruing" and "the debtor's claimed expenses and current standard of living, with a view toward ascertaining whether the debtor has attempted to minimize the expenses of himself and his dependents." *Hornsby v. Tenn. Student Assistance Corp. (In re Hornsby)*, 144 F.3d 433, 437 (quoting *Rice v. United States* (*In re Rice*), 78 F.3d 1144, 1149 (6th Cir. 1996)).

The *Brunner* factors were established in the context of a Chapter 7 bankruptcy proceeding and do not transfer neatly to the context of a Chapter 13 bankruptcy proceeding. *Ekenasi v. Educ. Res. Inst. (In re Ekenasi)*, 325 F.3d 541, 546 (4th Cir. 2003). In a Chapter 13 case, the question of whether a debtor will be unable to maintain a minimal standard of living throughout a significant portion of the repayment period must be premised on a prediction of what the debtor's situation will be at the conclusion of the Chapter 13 plan, which may extend up to

five years. *Id*. Whereas,

> [i]n a Chapter 7 case, the bankruptcy proceeding is short-lived and the debtor achieves a quick discharge of his unsecured, dis-chargeable debts. Thus, predicting whether the debtor's current inability to maintain a mini-mal standard of living will persist throughout a significant portion of the repayment period is based upon a known, current situation.

Id. at 547. Thus, the Court can easily apply the *Brunner* factors in light of a Chapter 7 debtor's current financial conditions but, in most cases, must base its *Brunner* application in a Chapter 13 case on speculative and hypothetical inferences regarding the financial conditions of a Chapter 13 debtor, something prohibited by the ripeness doctrine. At this point, neither Plaintiff, Defendant, nor the Court can properly address the *Brunner* factors. Although Federal Rule of Bankruptcy Procedure 4007(b) provides that a complaint under § 523(a)(8) "may be filed at any time," it does not provide that such a complaint will necessarily be ripe for adjudication at any time. *Pair v. United States of Am. (In re Pair)*, 269 B.R. 719, 721 (Bankr. N.D. Ala. 2001)*; Raisor v. Educ. Loan Servicing Ctr., Inc. (In re Raisor)*, 180 B.R. 163, 167 (Bankr. E.D. Tex. 1995). A complaint can be filed at any time in a Chapter 7 case without raising a concern as to its ripeness because Chapter 7 debtors receive a discharge quickly, minimizing the speculative nature of determining the dischargeability of student loan debt. However,

such a complaint may not be ripe at any time in a Chapter 13 case in which the debtor's likelihood of discharge and his or her future financial condition are much more speculative. *Id*.

C O N C L U S I O N

Defendant's motion to dismiss without prejudice is hereby granted.

An appropriate order shall enter.

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HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

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O R D E R

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For the reasons set forth in this Court's memorandum opinion entered this date, Defendant's motion to dismiss without prejudice is granted.

IT IS SO ORDERED.

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HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Opinion and Order were placed in the United States Mail this _____ day of January, 2005, addressed to:

CAROLYN DELOISE READY, 435 Catalina Avenue, Youngstown, OH 44504.

WAYNE W. SARNA, ESQ., 11 Federal Plaza Central, Metropolitan Tower, Seventh Floor, Youngstown, OH 44503.

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GREAT LAKES HIGHER EDUCATION, P. O. Box 7859, 2401 International Lane, Madison, WI 53704.

MICHAEL A. GALLO, ESQ., 20 Federal Plaza West, Suite 600, Youngstown, OH 44503.

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JOANNA M. ARMSTRONG